



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

MDV/173710

PRELIMINARY RECITALS

Pursuant to a petition filed April 18, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on June 14, 2016, at Waukesha, Wisconsin.

I am issuing this amended decision pursuant to the petitioner's daughter's rehearing request. In her request she highlighted that the original divestment was not the transfer of the home from the petitioner to herself. She is correct. There were large cash withdrawals from financial accounts that the agency believed were divestments. These occurred within the five year look back period. The divestment issue is moot because the transfer of the home from the petitioner's daughter back to the petitioner cured the divestment.

There remains no issue for determination.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The petitioner had transferred her home to her daughter. The home was transferred prior to the five year look back period. Within the five year look back there were cash withdrawals from financial accounts that the agency alleged were divestments.
3. On January 6, 2016 the petitioner applied for institutional MA coverage.
4. The agency denied the petitioner's application finding that there was a divestment.
5. The petitioner's daughter has since transferred the home back to her mother, listed the home for sale, and accepted an offer on the home. The home had significant damage to three of the four basement walls requiring major basement repairs including possibly rebuilding those walls.
6. The agency concluded that the transfer of the home cured the divestment, and approved the petitioner for institutional MA coverage effective December 1, 2015.

DISCUSSION

When an individual, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(a)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code § DHS 103.065(4)(a); *MA Handbook*, 17.2.1. This transfer is defined as a divestment. *Id.* The divestment must occur during the five year look back period. Wis. Stat. § 49.453(1)(f)(2m). Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment. The divestment penalty period is the determined by dividing the value of property divested by the average monthly cost of nursing facility services. Wis. Stat. § 49.453(3); *MA Handbook*, App. 17.5. When the entire divested resource is returned to the individual, the entire penalty period is nullified. *MA Handbook*, App. 17.5.5.1. The agency then re-evaluates the individual's Medicaid eligibility for long term care services retroactively, back to the beginning date of the previously imposed penalty period. *Id.*

In this case the petitioner transferred her home to her daughter prior to the five year look back period. Within the five year look back period there were large cash withdrawals from financial accounts that the agency alleges were divestments. Although the home was not the original divestment, the agency concluded that the transfer of the home from the petitioner's daughter back to the petitioner cured the divestment. This allowed the petitioner to be eligible for institutional MA effective December 1, 2015. At this point there is no issue for my determination.

The petitioner's daughter listed her mother's home for sale, and accepted an offer on the home. The home had basement issues that may require three of the four walls to be rebuilt. A basement contractor ended up purchasing the home. The petitioner's daughter testified that his offer was significantly higher than the other offers. This is probably because he is a basement contractor and can do the work at a reduced rate. The petitioner's daughter was concerned that the sales price may be a divestment. The agency does not allege that it is a divestment. That issue is not in front of me. I refer the agency to MDV/168214 if this issue arises. At this point there is no issue for me to decide.

CONCLUSIONS OF LAW

There remains no issue for determination.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

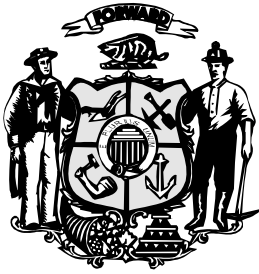
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of July, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 13, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability